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July 13, 2010



BY ECF

Hon. Nicholas G. Garaufis
United States District Judge
United States District Court for the Eastern
District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: United States, et al. v. City of New York
Civ. Action No. 07-cv-2067 (NGG) (RLM)**

Dear Judge Garaufis:

At 5:30 PM on July 12th, Plaintiffs-Intervenors' counsel received the City's rebuttal report on Exam 6019 by Dr. Catherine Cline, the Defendants' expert in this case. Attached to Dr. Cline's report is another - - new and unexpected - - expert report, this one from Dr. Christopher Erath. Dr. Erath is the expert whom the City had previously retained to file reports in response to those of Drs. Siskin and Lanier on the issue of equitable economic relief (back pay and benefits) for the victims of discriminatory practices on Firefighter Exams 7029 and 2043.¹ Those reports are before your honor in connection with the summary judgment motions that have been made on that issue.

Dr. Erath's new report consists of seven (7) pages of expert statistical analyses purportedly showing that the 6019 test has no adverse impact on minorities and, more specifically, it attempts to rebut the 2009 Report of Dr. Siskin regarding adverse impact which this Court cited in its January 21, 2010 Memorandum and Order on relief issues (pp. 33-35).

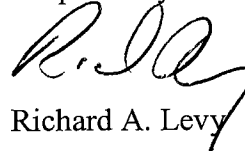
¹ It may be noteworthy that Dr. Erath is also the expert the City identified as the person who would file a rebuttal report to Dr. Wiesen's report, had the later been received.

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This attempt to insert a new expert report, transparently denominated "memo written for the New York City Law Department"² is untimely and the report is inadmissible. Given that counsel for the City argued vigorously, only a few days ago, that the report by Dr. Wiesen - - Plaintiffs-Intervenors' expert - - on the narrow issue of the impact on test-takers of answer sheet format was too late to be received, Defendants' belated attempt to introduce Dr. Erath's expert report is surprising, to put it mildly. Unlike the circumstances surrounding the Wiesen Report, which included the City's failure to provide data needed for the report to be done, Dr. Erath's report could easily have been filed in a timely fashion. The report was sent to the City's counsel on May 17, 2010, roughly three (3) weeks before expert reports were due. Thus, unlike the case with Dr. Wiesen, all the data needed for Dr. Erath's report and the report itself were in the City's hands well before the June 7th deadline for expert reports. To the extent that the report is responding to Dr. Siskin, as it specifically does on a number of issues, its late submission is even less justifiable.³

In short, Dr. Erath's report should be stricken as untimely and references to this report is the last three paragraphs of Dr. Cline's Report, which explicitly refer to Dr. Erath's "memo," should be stricken as well. Thank you for your consideration of this request.

Respectfully submitted,



Richard A. Levy

RAL:jos

Cc: All counsel of record (via ECF)

Hon. Roanne L. Mann
 Magistrate Judge
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² Cline Report of February 12, 2010 at p. 18.

³ As noted, Dr. Siskin's report was filed on September 10, 2009.

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All counsel by ECF